BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TIMOTHY N. SCANLON	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,003,145
LANDSTAR INWAY	)	
Respondent	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appealed the February 3, 2005, Award entered by Administrative Law Judge Brad E. Avery. The Board heard oral argument on July 20, 2005.

APPEARANCES

Paul D. Post of Topeka, Kansas, appeared for claimant. John M. Graham, Jr., of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. Additionally, at oral argument before the Board, the parties agreed the June 4, 2004, report from Dr. Edward J. Prostic is also part of the record along with the parties' joint letter to the doctor that requested the medical evaluation.

ISSUES

Claimant alleges he sustained injuries to his neck and left upper extremity on February 18, 2002, while working as respondent's employee. Respondent, a freight company, contends claimant was not working for the company as an employee. In the February 3, 2005, Award, Judge Avery found the employer-employee relationship did not exist on the date of accident. Therefore, the Judge denied claimant's request for workers compensation benefits.

Claimant contends Judge Avery erred. Claimant argues he was working for respondent as an employee on the date of accident. Claimant requests the Board to reverse the February 3, 2005, Award and to address the remaining issues not decided by Judge Avery in the Award.

Respondent requests the Board to affirm the Award, maintaining that claimant's relationship with the company was not that of an employee.

The issues before the Board on this appeal are:

1. Was claimant an employee of respondent at the time of the February 18, 2002, accident?

2. Did claimant provide respondent with timely notice of the accident?

3. Is claimant entitled to temporary total disability benefits and medical benefits?

4. What is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the February 3, 2005, Award should be affirmed.

Claimant worked for respondent as an over-the-road truck driver. On February 18, 2002, claimant injured his neck and left upper extremity while unloading a trailer he had delivered to Oregon.

But claimant is not entitled to receive workers compensation benefits for those injuries as he is not deemed to be an employee of the respondent for purposes of the Workers Compensation Act. And employers are only responsible under the Act for work-related injuries to their employees.[1]

Under the Workers Compensation Act, a truck owner who leases his or her truck to a licensed motor carrier shall not be considered to be an employee of that motor carrier when (1) the driver is the exclusive driver of the truck that is the subject of the lease or contract, (2) the driver is covered by an occupational accident insurance policy, and (3) the lease agreement or contract does not treat the truck owner as an employee for purposes

[1] K.S.A. 44-501(a).

of FICA (federal insurance contribution act), FUTA (federal unemployment tax act), social security, or federal income tax withholding. The Act provides:

> (a) (1) Any individual who is an owner-operator and the exclusive driver of a motor vehicle that is leased or contracted to a licensed motor carrier shall not be considered to be a contractor or an employee of the licensed motor carrier within the meaning of K.S.A. 44-503, and amendments thereto, or an employee of the licensed motor carrier within the meaning of subsection (b) of K.S.A. 44-508, and amendments thereto, and the licensed motor carrier shall not be considered to be a principal within the meaning of K.S.A. 44-503, and amendments thereto, or an employer of the owner-operator within the meaning of subsection (a) of K.S.A. 44-508, and amendments thereto, if the owner-operator is covered by an occupational accident insurance policy and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 *et seq*., the federal social security act, 42 U.S.C. § 301 *et seq*., the federal unemployment tax act, 26 U.S.C. § 3301 *et seq*., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 *et seq*.
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> (2) As used in this subsection:
>
> (A) "Motor vehicle" means any automobile, truck-trailer, semitrailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property;
>
> . . . .
>
> (C) "owner-operator" means an individual who is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier.[2]

The record is uncontradicted that claimant had occupational accident insurance coverage at the time of his February 2002 accident. The record is also uncontradicted that respondent did not withhold FICA, FUTA, social security, or income taxes from the payments it made to claimant. Consequently, for purposes of the Workers Compensation Act, claimant is precluded from being respondent's employee under K.S.A. 44-503c. And for that reason, claimant's request for benefits should be denied.

The Board is mindful that claimant argues K.S.A. 44-503c is not applicable because claimant rented only his truck or tractor unit to respondent rather than renting both a truck and trailer. The Board, however, finds that argument is without merit.

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[2] K.S.A. 44-503c.

AWARD

WHEREFORE, for the reasons expressed above, the Board affirms the February 3, 2005, Award denying this claim.

IT IS SO ORDERED.

Dated this ____ day of August, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Post, Attorney for Claimant
John M. Graham, Jr., Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director